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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 30th Day of May 1998

BEFORE

THE HON'BLE MR. JUSTICE HARI NATH TILHARI

C.R.P.No.3021/1993

BETWEEN:

Syndicate Bank,
Banaswadi Branch,
Maruthi Sevanagar,
Bangalore-560 033,
rep. by its Manager &
P.A. Holder Sri. H.S. Nagaraj.

...PETITIONER

(By Sri. G.V. Thimmappaiah, Adv.)

AND:

1. Sri. B. Akbar,
s/o Buden Saheb,
Proprietor, Expert Borewells,
No.3, Siddegowda Lane,
Susheela Road, Doddamavalli,
Bangalore-4.

2. Shamim,
w/o Ibrahim Saheb,
No.7, Batehammal Road,
Cox Town, Bangalore-5.

3. Sri R. Mohammed Sultan,
s/o Rahim Saheb,
No.1424, 20th cross,
I & III East Block,
Opp. Swimming Pool,
Jayanagar, Bangalore-11.

...RESPONDENTS

(By Sri. S. Gowrishankar, Adv.)

This Civil Revision Petition is filed u/s.115 of
CPC, against the order dt.31-7-93 passed in O.S.359/92
on the file of the VIII Addl. Civil Judge, Bangalore,
directing the plaintiff to release the vehicle.

This Civil Revision Petition coming on for
hearing this day, the Court made the following:-

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O R D E R

Heard the learned counsel for the appellant and Sri.Gowrishankar, learned counsel for the respondents.

2. This revision is directed against the order dated 31.7.1993 passed by the learned VIII Addl.Civil Judge, Bangalore in O.S.No.359/92. The plaintiff-Bank had filed a suit for recovery of Rs.1,06,623/- with interest. According to the plaintiff-Bank the defendant on co-obligation of second and the third defendant availed over-draft facility upto a limit of Rs.40,000/-. He hypothecated borewell with truck bearing No.CAW-746 and created mortgage in favour of the plaintiff-Bank by depositing the title deeds of the defendant No.2. According to the plaintiff, defendant No.1 obtained deferred payment guarantee facility from plaintiff-Bank to the tune of Rs.18,12,400/-. He had hypothecated the borewell drilling rig and executed mortgage of immovable property. Plaintiff seized the borewell drill, thereafter the defendant filed an application. The trial Court by order dated 21.1.1993 directed the plaintiff to release the borewell drill and plaintiff filed CRP.465/93. This Court by its order dated 23.3.1993 passed C.R.P.No.4650/93 disposed of that review with a direction to the 1st respondent therein to offer some other immovable property in place of the

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property already offered, mortgaged as security in O.S.No.452/92 on the file of the City Civil Court, Bangalore to the satisfaction of the Trial Court and to make payment of Rs.2 lakhs and directed the Bank that on deposit being made and other property being offered and given as security, the vehicle of the defendant should be released and further ^{if desired and if} directed ^{if payment in future of the} the 1st defendant to make regular instalments. The 1st defendant furnished the security and gave two cheques for Rs.2 lakhs and prayed for release of the vehicle. On the application for release of the vehicle being the plaintiff-revisionist applicant's counsel contended that the security offered was to be taken for the loan in the suit giving raise to the present revision, as well as in the Suit.No. 458/92. But the trial Court did not accept this condition since this Court i.e, High Court, had given direction to give security in place of security offered by the second defendant in lieu of security already given. The 2nd defendant has complied with and that it is not the case of the plaintiff that 2nd defendant had offered security for deferred payment guarantee facility for Rs.18,12,400/-. The trial Court passed the order accepting the house Nos. bearing Old.No.3/6 i.e, New No.10/1, 1st Main Road, 6th Block, Padarayanapura, Bangalore, as

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security and directed the release of the vehicle in terms of the order of this Court dt.23.3.1993. The Bank having ~~felt~~⁴⁴ aggrieved from the order of the learned ~~Judge~~^{44 Court below 44} has come up in revision before this Court.

3. I have heard Sri.G.V.Thimmappaiah, learned counsel for the Bank-revisionist applicant. Learned counsel contended that if it is taken as held by the Bank that this security that had been offered in the form of the property bearing No.3/6 which is equal to New No.10/1 as mentioned was security for the sum involved in Case.No.359/92 and it is not with reference to Suit No.458/92, the Court below should have made it clear so as to enable the present applicant to proceed in accordance with law. He has submitted that really the property was offered as security for both the properties involved in both the cases namely Suit No. 359/92 and 458/92. He has taken me through the order of this Court. It appears that as the order was passed in Suit No.359/92, this Court had ordered the respondent to offer some other property as security in place of property already offered in that suit. That other property has now been furnished as security in Suit No.359/92 and had been taken as security in Suit No.359/92 that means there was no security in Suit."

Shri. S. S.

No.458/92. Suit No.458/92 relates to the deferred payment guarantee facility for Rs.18,12,400/-.

Learned counsel submitted that in the other suit the claim was made to the tune of Rs.15,62,136/-.

So far the present revision is concerned, it arises from the proceeding relating to O.S.No.352/92. So far as the order of the trial Court is concerned, it has considered that security has been furnished in O.S.No.359/92. Whether it is a right or wrong decision, it is a decision of the Court having jurisdiction to arrive at. Even ^{if} the decision on the fact on law simplicitor is erroneous, and ^{it} is not ^{it furnishes} ~~not~~ ground for interference, under Section 115 of C.P.C. The jurisdiction of this Court under Section 115 of the Code confined to a question of jurisdiction as per Clause 'a', 'b', 'c'. Therefore, there appears ^{no good} no ground to interfere with the order of the trial Court. It is open for the Bank to proceed in accordance with law in respect of O.S.No.458/92 and to raise those pleas before the Court which may be available ^{to it} under law.

4. Subject to above observations, this revision petition is dismissed.

Sd/-
JUDGE

mvs/27.6.98.
8.7.98.